

**Applicant Initiated Interview Request Form**

Application No.: 10/750,789 First Named Applicant: Myers  
 Examiner: D. Shay Art Unit: 3735 Status of Application: Final rejection

**Tentative Participants:**

(1) Kirk A. Damman (2) Dr. Randy Frey  
 (3) Glen Belvis (4) Examiner David Shay

Proposed Date of Interview: 27 February 2008 Proposed Time: 3:30 p.m. EST (AM/PM) (PM)

**Type of Interview Requested:**

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☐ YES ☒ NO

If yes, provide brief description: \_\_\_\_\_

**Issues To Be Discussed**

Issues (Rej., Obj., etc.)	Claims / Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>Rej.</u>	<u>All</u>	<u>Of record</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached

**Brief Description of Arguments to be Presented:**

See attached  
 \_\_\_\_\_  
 \_\_\_\_\_

An interview was conducted on the above-identified application on \_\_\_\_\_.

**NOTE:** This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

\_\_\_\_\_  
 Applicant / Applicant's Representative Signature

**Kirk A. Damman**

\_\_\_\_\_  
 Typed/Printed Name of Applicant or Representative

**42,461**

\_\_\_\_\_  
 Registration Number, if applicable

\_\_\_\_\_  
 Examiner / SPE Signature

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	:	
Raymond I. Myers	:	
	:	
Appln. No.: 10/750,789	:	Art Unit: 3739
	:	
Filed: 2 JANUARY 2004	:	Examiner: David Shay
	:	
For: LENTICULAR REFRACTIVE SURGERY	:	Docket No.: 32/1198US(3)
OF PRESBYOPIA, OTHER REFRACTIVE:	:	
ERRORS AND CATARACT	:	
RETARDATION	:	
	:	

Commissioner for Patents  
Alexandria, VA 22313

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**ONLY**

**Amendment and Response**

Sir:

In response to the Office Action dated February 8, 2008, Applicant submits this Amendment and Response. This Amendment and Response is believed to overcome the cited rejections and place this case in condition for allowance.

**Amendments to the Claims** start on page 2 of this paper.

**Remarks** start on page 4 of this paper.

**Amendments to the Claims**

1. (Currently Amended) A method for increasing the flexibility of the ocular lens of the eye, comprising the steps of:

- a) selecting a location within the ocular lens of an eye;
- b) creating a microsphere at the selected location, wherein said microsphere comprises a gas-filled bubble of generally spherical shape; and
- c) repeating the steps of selecting and creating at a plurality of locations within the ocular lens so as to increase the flexibility of the lens

wherein the microspheres ~~microsphere~~ created in step c) ~~remain predominantly separate until after the last microsphere has been created~~ ~~one step of creating remains separate from any other microsphere created during another step of creating.~~

2. (Original) The method of claim 1 wherein said increase in flexibility corrects an optical anomaly of the eye.

3. (Original) The method of claim 2 wherein said optical anomaly comprises a refractive error.

4. (Previously Presented) The method of claim 3 wherein said refractive error is myopia, hyperopia, presbyopia, regular astigmatism, irregular astigmatism, or aberrations.

5. (Previously Presented) The method for increasing flexibility as set forth in claim 4, wherein the step of repeating generates at least one change in the ocular lens resulting in at least

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one effect selected from the group consisting of: alteration of lens surface curvature, increased lens flexibility, increased accommodation, reduced light scatter, reduced rate of increase in light scatter, and reduced rate of loss of accommodation.

6. (Original) The method of claim 1 wherein said increase in flexibility increases accommodation of the lens.

7. (Original) The method as set forth in claim 1 further including the step of: allowing said microspheres to collapse while maintaining said increase in flexibility.

8. (Original) The method as set forth in claim 7 wherein said collapse decreases the anterior to posterior thickness of the lens.

9. (Original) The method as set forth in claim 1 wherein the increase in flexibility creates no significant change in the anterior to posterior thickness of the lens.

10. (Cancelled)

11. (Previously Presented) The method of claim 1 wherein said microspheres are created with a separation in the range of about 2  $\mu\text{m}$  to about 20  $\mu\text{m}$ .

12 -39. (Cancelled)

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**REMARKS**

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. The claims are amended solely to better define the subject matter of the present invention. No new matter is provided by the amendment and the new language is supported by the specification as filed, specifically in paragraph [054] of the application as filed (paragraph [057] of the application as published) which indicates: “individual microspheres (520) may be created at positions within the lens that are separated by sufficient distance so that the microspheres remain predominantly separate, i.e., as a result of the lens tissue characteristics the majority of individual microspheres do not coalesce with an adjacent microsphere.” After the above amendment, application claims 1-9 and 11 are pending in the application. Application claim 1 is the only independent claim.

Applicant has studied the Office Action mailed February 8, 2008 and has the following remarks.

**35 U.S.C. §112**

The Examiner rejected claim 19 under 35 U.S.C. §112 second paragraph as being indefinite. Without admission as to the correctness of the rejection, claim 19 has been cancelled mooted the Examiner’s rejection.

**35 U.S.C. §102 and §103**

The Examiner rejected prior claims 1-9, 11, and 17 as anticipated by Bille et al. and claims 15, 16, 18, and 19 as rendered obvious by Bille et al. in conjunction with Schachar or Perricone. Without admission as to the correctness of the obviousness rejection, but solely to

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simplify issues for consideration after the final rejection, Applicant has cancelled claims 15-19 mooted the obviousness rejection.

Applicant believes that the Examiner and Applicant have reached agreement in prior Interviews that claims covering microspheres which remain predominantly separate are not taught by or disclosed in the cited references. The current contention of the Examiner simply relates to if the present claim language is limited to covering microspheres which remain predominantly separate.

As the Examiner has indicated, the Billie et al. reference discloses the formation of “volumes” which are placed so as to be joined together to form large voids. The Examiner, however, asserted in the above referenced action that the prior claims of the present application, which stated that each microsphere remain separate from any other microsphere could be interpreted as meaning that only one microsphere, of all the created microspheres, need remain separate. Applicant contends this was not the intended meaning of the word “any” as used in the prior claims, however for clarification and to address the Examiner’s legitimate enunciated concerns, claim 1 has been amended to clarify that all the microspheres remain predominantly separate until after the last microsphere is created.

The Examiner raised two claim interpretation issues where he felt that the claims could be interpreted to read upon the disclosure of Bille et al. These will be addressed specifically and independently. However, in general, Applicant believes the claim language, as amended, to be consistent with the agreements reached in prior Interviews and addresses the Examiner’s concerns by deleting the term “any,” requiring the current claim language to read on all shots in a procedure, and providing a clear end point for the methods of the claims.

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Firstly, the Examiner contended that the prior claim language of “any” could be interpreted to imply that any single microsphere created in the repeating action could be separate while all others could be combined. In order to place this case in condition for allowance and eliminate any confusion, Applicant has amended independent claim 1 to state that the microspheres created during step c) remain predominantly separate until after the last microsphere is created. As this language more clearly indicates that all the microspheres created during the repeating remain predominantly separate while the method is ongoing, the Examiner’s first situation is not covered by the present claim language. To utilize the Examiner’s example, if N microspheres were created in the method, N would need to remain predominantly separate until after the Nth was created based on the current claim language. Therefore, the situation of microspheres 1 through N-1 being connected prior to the Nth being created separate from them would be outside the scope of the present claims.

With regards to the Examiner’s second concern, the Examiner asserts that since claim 1 was a “comprising” claim, it would cover processes wherein separate microbubbles are created, and subsequently joined by additionally placed microbubbles. Applicant asserts the present claim language also avoids covering this second situation of the Examiner’s concern.

The Examiner’s concern that someone could create an amalgamated formation of microspheres after completion of the steps of the present claims does not indicate that the present claims read on the prior art of Bille et al. The disclosure of Bille et al. indicates that constructions are formed of volumes which are predominately overlapping or touching (e.g. as indicated by the prescribed spacing and number of volumes within a confined location Col. 5, lines 21-44) at the time the procedure is completed. It does not provide for an arrangement of

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microspheres that are predominantly separate at the time of completion of the formation of microspheres.

While the Examiner contends that Bille provides for an intermediate where the volumes are separate, such an alleged intermediate does not read on the present claims which require that the method be completed (all microspheres having been created) while the microspheres remain predominantly separate. Effectively, when microspheres are still being created (whether independently or connected) during the procedure, the method of the present claim is still continuing, and therefore the claim can only cover a method where the microspheres remain predominantly separate until all the microspheres which are to be created in the procedure have been created, specifically excluding the situation of Bille et al. where they are not predominantly separate once all have been created. With clarification in the claim language as to the endpoint of the method, Applicant also notes that activity after the last microsphere is created is irrelevant to the method of the present claims.

Based on the above, Applicant contends the claims, as amended, are not anticipated or rendered obvious by the disclosure of Bille et al. Further, simply for the sake of completeness, Applicant also contends that neither Pericone or Schachear makes up for the shortcomings of Bille et al. and the present claims are not rendered obvious by any combination of these references.

### **Conclusion**

In light of the above remarks, Applicant believes there are no further issues regarding the patentability of the pending claims and respectfully requests the Examiner withdraw his rejections and allow all pending claims so that this case can pass on to issue.

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Applicant believes no additional fees are due in conjunction with this filing. However, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our

**Deposit Account No. 50-0975.**

If any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,  
Lewis, Rice & Fingersh, L.C.

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Dated: DRAFT

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